

**STATE OF MICHIGAN  
IN MICHIGAN SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff-Appellant,

v

Supreme Court No.

WILLIAM LYLES, JR.  
Defendant-Appellee.

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L.C. No. 12-008021-FC  
COA No. 315323

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**PEOPLE-APPELLANT'S  
APPLICATION FOR LEAVE TO APPEAL**

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### Statement of Judgment Appealed From and Relief Sought

The People request leave to appeal of the unpublished decision of the Michigan Court of Appeals dated December 22, 2015, *People v William Lyles, Jr.*<sup>1</sup>

On July 22, 2014, the Court of Appeals in *People v Williams Lyles Jr.*,<sup>2</sup> reversed defendant's conviction based on the failure to give a character witness instruction and denied rehearing. The Michigan Supreme Court directed supplemental briefing and heard oral argument. After oral arguments, the Michigan Supreme Court remanded the case back to the Court of Appeals. Then on December 22, 2015, the Court of Appeals again reversed defendant's conviction because of the failure to give the character witness instruction.

The Court of Appeals erred as a matter of law when it failed to properly consider the totality of the circumstances when determining whether the failure to give the character witness instruction was harmless. The Court of Appeals analysis focused primarily on the trial court's failure to instruct and the evidence presented by the People. The Court of Appeals failed to consider the weight of the character evidence presented as part of the totality of the circumstances and instead, essentially held that the failure to instruct on a character witness, when requested, constituted error requiring reversal.

The Court of Appeals should have considered the content of the character evidence presented, the other instructions given to the jury, and the evidence presented by the People to determine whether the failure to give the specific character witness instruction would have

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<sup>1</sup> *People v William Lyles, Jr.*, unpublished per curiam opinion of the Michigan Court of Appeals, Issued December 22, 2015 (Docket No. 315323). Attached as Appendix A.

<sup>2</sup> *People v William Lyles, Jr.*, unpublished per curiam opinion of the Michigan Court of Appeals, Issued July 22, 2014 (Docket No. 315323). Attached as Appendix B.

changed the outcome of the proceedings. Instead, the Court of Appeals held that the failure to instruct, in and of itself, required reversal.

The Court of Appeals's sole reliance on the failure to instruct is evident throughout the Court of Appeals opinion. The Court of Appeals described the character evidence as evidence at the heart of defendant's defense and that the failure to instruct "eviscerated defendant's defense." The Court of Appeals came to these conclusions despite the record, which reflects that the character evidence was not mentioned in defendant's opening statement or closing argument and only amounted to one witness.<sup>3</sup> The Court of Appeals arrived to its conclusion that the character evidence was the "heart of defendant's defense" without considering the actual content of the evidence, other jury instructions given, or the fact that it was not argued by defense counsel in defendant's defense.

Perhaps the Court of Appeals's error, placing significant weight solely on the failure to instruct, can be attributed to the Court's mischaracterization of the requested character witness instruction. The Court of Appeals seems to have considered the requested character witness instruction as an instruction to defendant's defense; but such an instruction is considered a general instruction regarding a witness- *not* a defense instruction.<sup>4</sup> Regardless, the trial court's analysis and application was erroneous.

Contrary to the Court of Appeals's conclusion, defendant has not shown that, after the examination of the entire cause, the failure to give the jury the specific instruction on Kim Harden's testimony resulted in a miscarriage of justice. Particularly in the context of the other

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<sup>3</sup> The Court of Appeals found it irrelevant that Harden's testimony was not mentioned.

<sup>4</sup> The instruction at issue is found under Witnesses CJI 5.1-5.13.

instructions given, it cannot be said that error, let alone error occasioning a miscarriage of justice, occurred here.

Additionally, defendant's character evidence that he was "peaceful" and "against violence," primarily before the murder occurred, had very little weight, especially in light of the evidence presented. The character evidence to which an instruction would have referred, the absence of which the Court of Appeals found more probably than not was outcome determinative, can be summarized as follows. Kim Harden grew up in Highland Park, but moved to California to go to school in 1980.<sup>5</sup> Harden described defendant like a "cousin" to her, she knew defendant her whole life, they lived on the same block, and their parents were very close.<sup>6</sup> After Harden moved to California, she returned to Michigan on occasion,<sup>7</sup> and when she did, she would visit defendant's family home, but she would only see defendant if he happened to be at the family home.<sup>8</sup> Harden knew Louise Kountz and throughout the 1980s, saw defendant and Kountz together about three or four times, and, to her, defendant appeared to be in love.<sup>9</sup> Harden described defendant as peaceful and against violence.<sup>10</sup> Harden's minimal contact with defendant between 1980 and 1985 provides very little weight to her opinion testimony of

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<sup>5</sup> 1/18, 95.

<sup>6</sup> 1/18, 93.

<sup>7</sup> 1/18, 100. During the period of 1980-1985, Harden only returned home on the holidays and during summer breaks.

<sup>8</sup> 1/18, 95-97.

<sup>9</sup> 1/18, 103-104.

<sup>10</sup> 1/18, 100.

defendant's reputation in the community, as she did not live in the community during that time and only personally saw defendant on occasion.<sup>11</sup>

After reviewing the totality of the circumstances, it is clear that any error in failing to give the specific requested instruction was harmless. Had the Court of Appeals considered the actual character evidence presented, the other instructions read to the jury, and the evidence presented in support of defendant's guilt, the Court would have found that the error was harmless.

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<sup>11</sup> Also because defendant was in the army from 1974 through 1977, it appears Harden's contact with defendant during that time was also limited. 1/18, 77. Harden makes no mention of defendant being in the army.



## **Statement of the Question Presented**

### **I.**

**A new trial should not be granted unless after an examination of the entire cause it shall affirmatively appear that the error resulted in a miscarriage of justice. Here, the character witness was not around defendant during the relevant time period, there was substantial evidence to support defendant's guilt, and the jury was instructed to consider all evidence when assessing defendant's guilt. Given the nature of the error, and the record of this case, was the absence of an instruction under M Crim JI 5.8a(1), more probably than not outcome determinative?**

**The People answer: "NO."**

**The Court of Appeals answered: "Yes."**

### Statement of Facts

On December 27, 1983, Melissa Kountz, Kimberly Stokes, Louise Kountz, Jimmy Goodwin, and Andrew (Melvin) Weathers lived on 88 Louise in Highland Park. When they went to bed that night, the electricity and telephone were working, the front door was locked, and the basement window was intact.<sup>12</sup> Then on December 28, 1983, the household of 88 Louise was awoken by the sounds of Melvin gasping for his last breaths.

In the early morning hours of December 28, 1983, Kimberly thought she was dreaming when she heard Melvin calling for her mother, Louise.<sup>13</sup> Melissa also heard the faint calls by Melvin for her mother.<sup>14</sup> Then, Louise jumped out of her bed and shouted for everyone to hit the ground, afraid it was another incident of a brick being thrown at their house.<sup>15</sup> Louise, Jimmy, Melissa, and Kimberly found themselves in the hallway, without being able to turn on the lights or use the phone, but they could hear what sounded like Melvin gasping for air.<sup>16</sup> Louise told Melissa and Kimberly to go next door and call the police.<sup>17</sup> As the girls walked down the steps, Melissa ahead of Kimberly, Melissa could hear another person ahead of them, also walking down the steps.<sup>18</sup> As they walked down the steps, Melissa was able to see and smell the figure of the

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<sup>12</sup> Transcripts are cited throughout this Supplemental Brief in the following form: Month/date of proceeding, page number. 1/15, 105-106.

<sup>13</sup> 1/16, 180.

<sup>14</sup> 1/16, 68.

<sup>15</sup> 1/15, 106-108.

<sup>16</sup> 1/15, 107-108; 1/16, 181.

<sup>17</sup> 1/15, 108; 1/16, 182.

<sup>18</sup> 1/15, 110, 113.

person ahead of her and she was certain it was defendant.<sup>19</sup> Kimberly at first was unsure why Melissa was walking down the steps so slowly and nudged Melissa, Melissa turned around and motioned for Kimberly to slow down, then Kimberly also noticed the figure ahead of them.<sup>20</sup> The build of the figure matched that of defendant's and, in Kimberly's mind, the figure ahead of them was in fact defendant.<sup>21</sup>

Once the girls were able to make it down the stairs, they no longer saw defendant ahead of them.<sup>22</sup> There were five exits in their home and they were both unsure which exit defendant used to leave the house.<sup>23</sup> They unlocked the front door and proceeded out of their home and ran to their neighbor's home, the Rhodman's.<sup>24</sup> Carolyn Rhodman opened the door for Melissa and Kimberly, both of whom were visibly upset, crying, and shaking, when they both told Carolyn that defendant killed Melvin.<sup>25</sup> Carolyn assisted them in calling 9-1-1.<sup>26</sup> Kimberly stayed at the Rhodman's home while Melissa returned to her home.<sup>27</sup> Camille Rhodman, Carolyn's daughter,

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<sup>19</sup> 1/15, 113-114.

<sup>20</sup> 1/16, 183-184.

<sup>21</sup> 1/16, 183-184.

<sup>22</sup> 1/15, 116-117; 1/16, 185.

<sup>23</sup> 1/16, 14; 1/16, 185.

<sup>24</sup> 1/16, 78.

<sup>25</sup> 1/17, 95-97.

<sup>26</sup> 1/17, 98.

<sup>27</sup> 1/17, 98.

8 years old at the time, was awoken by Melissa and Kimberly. While standing at the top of the stairs, Camille heard Melissa say that defendant came into the house.<sup>28</sup>

When Melissa returned home, the police had arrived, but the lights were not on.<sup>29</sup> Melissa was able to sneak upstairs. She saw two officers at the top of the stairs with flash lights, shining their light on Melvin.<sup>30</sup> She saw Melvin lying on the floor with a butcher knife, from a knife block set in her kitchen, protruding out of his chest.<sup>31</sup> Melissa snuck back downstairs and followed the officers to the basement where they were able to reconnect the fuse and turn the lights on.<sup>32</sup> In the basement, a window was broken, and their puppy was missing.<sup>33</sup> The puppy was found in the freezer.<sup>34</sup> After the lights were on, Melissa returned upstairs where she saw defendant's shoes placed underneath a light switch behind the kitchen door.<sup>35</sup> Melissa saw a sponge taped to the bottom of one of the shoes.<sup>36</sup> She identified the shoes as belonging to

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<sup>28</sup> 1/17, 118.

<sup>29</sup> 1/15, 127-128.

<sup>30</sup> 1/15, 127-128.

<sup>31</sup> 1/15, 128-129.

<sup>32</sup> 1/15, 130.

<sup>33</sup> 1/15, 131-133. They would keep their puppy in the basement overnight. 1/15, 132.

<sup>34</sup> 1/15, 133.

<sup>35</sup> 1/16, 10-11.

<sup>36</sup> 1/16, 12-13.

defendant and described them as brown loafers.<sup>37</sup> Defendant's shoes were not there the night before.<sup>38</sup> After that night defendant was no where to be seen, smelled, or heard of again.<sup>39</sup>

Defendant's contact with the household of 88 Louise began several years before 1983, when he and Louise Kountz entered into a relationship shortly after her divorce. Almost immediately after the divorce, defendant moved in to Louise's house on 88 Louise, with Louise, Melissa, Kimberly, and Carrie Weathers.<sup>40</sup> Carrie was Melvin's sister and was Louise's first cousin.<sup>41</sup> Defendant told Carrie several times that he did not want her living there.<sup>42</sup> Carrie was uncomfortable living there.<sup>43</sup> Carrie described defendant and Louise's relationship as "brutal" and that she would see defendant hit Louise almost every other day.<sup>44</sup> Eventually, Carrie moved out because of defendant and was not allowed to return to 88 Louise.<sup>45</sup> At one point, Carrie inquired about moving back in.<sup>46</sup> When Louise presented defendant with the idea he said "over

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<sup>37</sup> 1/16, 10-12.

<sup>38</sup> 1/16, 12.

<sup>39</sup> 1/15, 135; 1/16, 192.

<sup>40</sup> 1/16, 160.

<sup>41</sup> 1/17, 62.

<sup>42</sup> 1/17, 69.

<sup>43</sup> 1/17, 69-70.

<sup>44</sup> 1/17, 65-66.

<sup>45</sup> 1/17, 70-72.

<sup>46</sup> 1/15, 91.

my dead body or hers.”<sup>47</sup> Defendant then, without any clothing on, walked downstairs and came back upstairs holding a butcher knife and stabbed it in the middle of the bed.<sup>48</sup> Carrie did not move back in to 88 Louise. Melvin moved in to 88 Louise sometime after Carrie moved out.<sup>49</sup>

Defendant continued to live with Melissa, Kimberly, and Louise for about four years.<sup>50</sup> Louise worked at Michigan Bell almost every day.<sup>51</sup> Defendant was never seen going to work.<sup>52</sup> Melissa’s memory of defendant and her mother’s relationship was that it was very abusive.<sup>53</sup> Over time the relationship got worse.<sup>54</sup>

Melissa described several instances of the abuse. One instance was when defendant raped Louise in front of her. Louise and Melissa were watching television when defendant asked Louise to go upstairs several times, but Louise refused.<sup>55</sup> Defendant then picked Louise up and tried to carry her up the stairs, but Louise was holding on to the bannister with both hands trying to stop defendant from taking her upstairs.<sup>56</sup> Eventually, defendant threw Louise on the floor in

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<sup>47</sup> 1/15, 93.

<sup>48</sup> 1/15, 93-94.

<sup>49</sup> 1/15, 57; 1/16, 160.

<sup>50</sup> 1/15, 56.

<sup>51</sup> 1/15, 58.

<sup>52</sup> 1/16, 176.

<sup>53</sup> 1/15, 61.

<sup>54</sup> 1/16, 162.

<sup>55</sup> 1/15, 63.

<sup>56</sup> 1/15, 63.

the front room. Melissa ran upstairs, changed out of her pajamas, and went back downstairs where she saw her mother Louise on the floor crying.<sup>57</sup> Melissa grabbed a fireplace poker and hit defendant on the back.<sup>58</sup> Melissa saw defendant physically inside her mother.<sup>59</sup> Melissa got scared and ran out of the house, Kimberly and Melvin followed.<sup>60</sup> They all ran to Melissa and Kimberly's grandmother's home.<sup>61</sup>

Kimberly also witnessed the abuse between defendant and her mother. Defendant once whipped Kimberly after he found out she got in a fight with his cousin.<sup>62</sup> Kimberly called her mother to tell her what defendant had done, and her mother came home on her lunch break.<sup>63</sup> Defendant "beat up" Louise in the living room with an open and closed fist.<sup>64</sup> In another instance, defendant asked Louise for money and said to her "if you don't, then you'll come home to some dead kids."<sup>65</sup> Defendant would also snatch Louise's purse and hit Louise.<sup>66</sup> Melissa and

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<sup>57</sup> 1/15, 64.

<sup>58</sup> 1/15, 64.

<sup>59</sup> 1/15, 64.

<sup>60</sup> 1/15, 64.

<sup>61</sup> 1/15, 66.

<sup>62</sup> 1/16, 164.

<sup>63</sup> 1/16, 164.

<sup>64</sup> 1/16, 165-166.

<sup>65</sup> 1/15, 70.

<sup>66</sup> 1/15, 71.

Kimberly did not call the police because they were taught that what happens in the home stays in the home, and even when the police came, defendant would always return to their home.<sup>67</sup>

Defendant's violence was known by many. George Arnold, aware of defendant's violent behavior, moved in to 88 Louise around 1981 or 1982 for less than a year, to look after Melissa and Kimberly.<sup>68</sup> While living there, Arnold saw defendant hit Louise and when he tried to intervene defendant slapped Arnold "upside" his head.<sup>69</sup> In another incident, when Arnold saw defendant hitting Louise, he grabbed a cast iron skillet to hit defendant, but defendant left the house.<sup>70</sup> Arnold also described an incident where Louise and defendant were having an argument and Arnold was told to go outside. While Arnold was on the porch he heard defendant say "I don't give a fuck about your nephew or your brother, I'll kill all you bitches."<sup>71</sup> Afterwards, defendant hit Arnold several times with a closed fist, until Arnold was able to run away.<sup>72</sup> Arnold felt like his presence was putting Louise in more danger.<sup>73</sup> Arnold moved out of 88 Louise because he was scared.<sup>74</sup> Arnold remembered that defendant smelled all the time.<sup>75</sup>

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<sup>67</sup> 1/15, 88; 1/16, 171-172.

<sup>68</sup> 1/17, 8-9; 1/17, 126-127.

<sup>69</sup> 1/17, 130.

<sup>70</sup> 1/17, 133-134.

<sup>71</sup> 1/17, 137.

<sup>72</sup> 1/17, 137-138.

<sup>73</sup> 1/17, 135.

<sup>74</sup> 1/17, 147.

<sup>75</sup> 1/17, 140.



Jeffery Trent lived at 76 Louise and was the Kountz's neighbor.<sup>76</sup> Trent was friends with Kimberly and Melissa and remembered that defendant and Louise had a violent relationship.<sup>77</sup> Trent remembered one particular incident, when defendant had Louise look under the hood of defendant's car, when he kicked her in the butt and slammed the hood on the upper half of her body.<sup>78</sup> Trent immediately ran home and told his father what he saw.<sup>79</sup> Later he saw the police at Louise's home.<sup>80</sup>

Defendant moved out of 88 Louise in the Summer of 1983. Shortly after defendant moved out, Jimmy Goodwin moved in to 88 Louise.<sup>81</sup> One day in October 1983, Jimmy, his friend Rosco, Melvin, Kimberly, and Louise were at home playing cards, when defendant walked in, unannounced, holding a bag of pinto beans.<sup>82</sup> Defendant asked to speak to Louise and both defendant and Louise went outside on the back porch.<sup>83</sup> Melissa could hear them arguing, but could not hear what was being said.<sup>84</sup> When defendant and Louise walked back in the house,

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<sup>76</sup> 1/18, 52-53.

<sup>77</sup> 1/18, 54.

<sup>78</sup> 1/18, 55.

<sup>79</sup> 1/18, 55, 59-60.

<sup>80</sup> 1/18, 61.

<sup>81</sup> 1/15, 59.

<sup>82</sup> 1/15, 75-76.

<sup>83</sup> 1/15, 78-79.

<sup>84</sup> 1/15, 82.

Louise had a bloody nose.<sup>85</sup> As defendant was walking towards the front door to walk out of the house, Jimmy and Rosco began to fight with defendant. Eventually, defendant was able to break away and leave.<sup>86</sup> Melvin was not involved in the fight; he was scared and ran upstairs.<sup>87</sup> As defendant was walking away from the home, Rosco shouted “you forgot your pinto beans,” and defendant responded “I’ll be back.”<sup>88</sup>

In addition to defendant’s unannounced visit after moving out, he continued to call the house. Defendant would call the house and when Melissa would answer he would sometimes ask to speak to her “bitch ass mom.”<sup>89</sup> In one instance, Melissa responded “didn’t you get enough of Jimmy and Rosco beating you up do you want me to have them do it again?” Defendant in reply said “let me tell you something, little girl, you get smart with me and I’ll come up to the school” and “beat my [your] ass.”<sup>90</sup> Another time, defendant called and spoke to Kimberly, but Melissa listened to the conversation using another phone.<sup>91</sup> Defendant asked Kimberly if she thought he and her mother would get back together, Kimberly said “no.”<sup>92</sup>

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<sup>85</sup> 1/15, 83; 1/16, 168.

<sup>86</sup> 1/15, 84-85; 1/16, 169.

<sup>87</sup> 1/15, 85; 1/16, 169.

<sup>88</sup> 1/15, 85.

<sup>89</sup> 1/15, 96.

<sup>90</sup> 1/15, 96-97.

<sup>91</sup> 1/15, 98.

<sup>92</sup> 1/15, 98.

Defendant also asked Kimberly if Melvin had any influence on her mother and she said “no.”<sup>93</sup> Defendant blamed the demise of his relationship with Louise on Melvin and said “this is Melvin’s fault,” and “if it’s the last thing I do I’m going to get Melvin, I’m going to get that Melvin.”<sup>94</sup> Defendant blamed everything on Melvin, although Melvin was scared of him.<sup>95</sup> In other instances, defendant would call the house, ask for Louise, and hang up.<sup>96</sup> In addition to the phone calls, after defendant moved out, bricks were thrown at their house.<sup>97</sup> But after December 28, 2013, defendant stopped calling the house, showing up at the house, and bricks were no longer thrown at their house, and defendant was *not* seen again.<sup>98</sup>

After Melvin’s murder, statements and evidence were gathered, and (now retired) Lieutenant James Francisco, a detective at the time, issued a warrant for defendant’s arrest for the murder of Andrew (Melvin) Weathers.<sup>99</sup> Francisco placed defendant’s arrest warrant in LEIN.<sup>100</sup> The evidence compiled regarding the murder of Melvin was stored in Highland Park’s now closed courthouse, and was destroyed after the building was devastated after a tornado.<sup>101</sup> In

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<sup>93</sup> 1/16, 175.

<sup>94</sup> 1/15, 99; 1/16, 177.

<sup>95</sup> 1/16, 177.

<sup>96</sup> 1/15, 101-102.

<sup>97</sup> 1/15, 100. But Melissa and Kimberly never saw defendant throw a brick at their home.

<sup>98</sup> 1/15, 136.

<sup>99</sup> 1/16, 130.

<sup>100</sup> 1/16, 133.

<sup>101</sup> 1/16, 126.

2012, an article on Melvin's murder was in the paper, and Francisco contacted Detective Paul Thomas, with the Highland Park Police Department.<sup>102</sup> Afterwards, Melissa also contacted Thomas about Melvin's unsolved murder.<sup>103</sup> Thomas began to investigate Melvin's unsolved murder and was able to locate the original warrant and collect statements from witnesses.<sup>104</sup> Afterwards, Thomas sought to locate defendant and take him into custody.<sup>105</sup>

Using his experience from the US Marshall Service for tracking fugitives, Thomas located a home that belonged to Charlotte Lyles, who Thomas believed to be defendant's mother.<sup>106</sup> Around 1:00 p.m., Thomas and his partner Terry Shaw arrived to Charlotte's home and saw a man, later identified as defendant, sitting on the front porch, leaning back in a very relaxed position.<sup>107</sup> Thomas and his partner exited the police car and approached defendant. As they approached defendant, he was no longer relaxed, he sat straight up, and stared at Thomas as they walked towards him.<sup>108</sup> Once Thomas and his partner stepped onto the porch, defendant stood up. Thomas identified himself as a Highland Park Police Officer and told defendant that

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<sup>102</sup> 1/17, 165.

<sup>103</sup> 1/17, 167.

<sup>104</sup> 1/17, 178-179.

<sup>105</sup> 1/17, 179.

<sup>106</sup> 1/17, 180.

<sup>107</sup> 1/17, 182.

<sup>108</sup> 1/17, 182.

they were working on a cold case murder investigation, but did not identify the victim.<sup>109</sup> Defendant said he did not know anything about it.<sup>110</sup>

Thomas described defendant as very unkept, his clothes were not neat, and he had an odor-an unwashed smell- possibly a smoker's smell.<sup>111</sup> Thomas asked defendant if he lived at the home whose porch he was sitting on, and he said that he did not.<sup>112</sup> Thomas also asked "who he was" and defendant said that his name was "Mark Jackson," but was unable to provide Thomas with any identification.<sup>113</sup> Thomas asked defendant if they could take a picture of him and he agreed. Thomas's partner took a picture of defendant and sent it to Melissa, who confirmed that the individual they had been speaking to was defendant.<sup>114</sup>

After it was confirmed that the individual on the porch was defendant, Thomas with his associates from the US Marshal Service, arrested defendant.<sup>115</sup> Defendant was taken into custody and held at the Highland Park Police Department.<sup>116</sup> While there, defendant waived his *Miranda* rights and gave a statement. Defendant stated that he and Louise Kountz were in a relationship

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<sup>109</sup> 1/17, 183.

<sup>110</sup> 1/17, 183-184.

<sup>111</sup> 1/17, 184.

<sup>112</sup> 1/17, 185.

<sup>113</sup> 1/17, 185-186.

<sup>114</sup> 1/17, 187.

<sup>115</sup> 1/17, 187.

<sup>116</sup> 1/18, 21.

and that they broke up because of their age difference; Louise was older.<sup>117</sup> Defendant was not upset if Louise had a new boyfriend because “if she didn’t want me, I didn’t want her. She was a dirty lady anyway. She got rid of her husband for me.”<sup>118</sup> Defendant stated that he was not working at the time so Louise had her people “jump” on him so he left, he was scared of her family.<sup>119</sup> After he moved out of Louise’s home, he moved to Mississippi.<sup>120</sup> Defendant stated that he never threatened to kill Louise, but that instead he was scared of her.<sup>121</sup> Defendant denied going to Louise’s house or stabbing someone on a night in December 1983.<sup>122</sup>

At trial, defendant presented three witnesses in his defense: Geraldine Johnson, Joann Davenport, and Kim Harden. Geraldine Johnson is defendant’s oldest sister.<sup>123</sup> Johnson and defendant grew up in Highland Park.<sup>124</sup> Johnson testified that in 1971, defendant graduated from high school and enlisted in the army from 1974 through 1977.<sup>125</sup> When defendant returned to Highland Park in 1977, he was employed at Chrysler.<sup>126</sup>

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<sup>117</sup> 1/18, 29.

<sup>118</sup> 1/18, 30.

<sup>119</sup> 1/18, 29.

<sup>120</sup> 1/18, 29.

<sup>121</sup> 1/18, 29.

<sup>122</sup> 1/18, 30.

<sup>123</sup> 1/18, 76.

<sup>124</sup> 1/18, 76.

<sup>125</sup> 1/18, 77.

<sup>126</sup> 1/18, 77.

Joann Davenport dated defendant in 1972, for about one year.<sup>127</sup> Davenport grew up in Highland Park, but moved to Detroit in 1975.<sup>128</sup> Davenport testified that she and defendant had a good relationship and that they were “good friends.”<sup>129</sup> Davenport did not stay in touch with defendant after their relationship ended.<sup>130</sup> Davenport testified that while she was in a relationship with defendant he never beat her nor was he verbally abusive.<sup>131</sup> Davenport never lived with defendant and could not remember the last time she had seen him.<sup>132</sup>

Kim Harden, defendant’s “good character” witness, grew up in Highland Park, but moved to California to go to school in 1980.<sup>133</sup> Harden described defendant as like a cousin to her, she knew defendant her whole life, they lived on the same block, and their parents were very close.<sup>134</sup> After Harden moved to California, she would return to Michigan on occasion,<sup>135</sup> and when she did she would visit defendant’s family home.<sup>136</sup> She would see defendant only if he was at his

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<sup>127</sup> 1/18, 84.

<sup>128</sup> 1/18, 88.

<sup>129</sup> 1/18, 87.

<sup>130</sup> 1/18, 87.

<sup>131</sup> 1/18, 89-90.

<sup>132</sup> 1/18, 90-91.

<sup>133</sup> 1/18, 95.

<sup>134</sup> 1/18, 93.

<sup>135</sup> 1/18, 100. During the period of 1980-1985, Harden only return home on the holidays and during summer breaks and would only see defendant if he was at his mother’s home and she was visiting. 1/18, 99.

<sup>136</sup> 1/18, 95-97.

family home while she was there.<sup>137</sup> Harden knew Louise Kountz and throughout the 1980s, saw defendant and Kountz together about three or four times.<sup>138</sup> Harden described defendant as a peaceful person who did not believe in violence.<sup>139</sup> Harden also testified that during the 1980s, although she did not live in Highland Park, defendant did not have a reputation for being an abusive person.<sup>140</sup>

The People's closing argument referenced the testimony of defendant's witnesses.<sup>141</sup> Defendant's closing argument only mentioned the fact that defendant was in the army during the period of 1974 through 1977.<sup>142</sup>

Defendant did not submit any written request for particular jury instructions,<sup>143</sup> but did orally ask for the following jury instruction "5.88 (sic) . . . Character evidence regarding--" and the trial court responded, "Okay. All right."<sup>144</sup> The trial court read to the jury the following instruction:

you've heard the testimony of - - - about witness' truthfulness. You may consider this evidence together with all other evidence in the case in deciding whether you believe the testimony of the witness, inn (sic) deciding how much weight to give that witness. The prosecutor has examined some of the defendant's character

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<sup>137</sup> 1/18, 96-97.

<sup>138</sup> 1/18, 103-104.

<sup>139</sup> 1/18, 99-100.

<sup>140</sup> 1/18, 102-103.

<sup>141</sup> 1/18, 128.

<sup>142</sup> 1/18, 140.

<sup>143</sup> 1/18, 109.

<sup>144</sup> 1/18, 168.



witnesses as to whether or not they heard anything bad about the defendant. You should consider such cross- examination only in deciding whether or not you believe the character witness and whether they described the respondent fairly.<sup>145</sup>

The- - you should not decide this case based on which side presented more witnesses. Instead, you should think about each witness and each piece of evidence and whether you believe them. Then you must decide whether the testimony and evidence you believe proves beyond a reasonable doubt that defendant is guilty.<sup>146</sup>

A sidebar was held on the record, with the Judge, prosecutor, and defense attorney, where the lying in wait instruction was asked to be stricken from the record, but no other corrections were requested.<sup>147</sup> Then, after the two alternates were chosen and excused, defense counsel placed her objection on the record to the following:

Criminal Jury Instruction 5.88 (sic), Character Evidence Regarding the Conduct of the Defendant, there was - - - the first paragraph was completely changed as to the evidence that the defense provided during trial, was that the witnesses - - - non-violence and domestic relationships. That was not as it was read to the jury. . . . And I'm just placing my objection on the record as - - - as to that.<sup>148</sup>

Defense counsel did not ask for the instruction to be corrected before the jury began deliberations.<sup>149</sup>

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<sup>145</sup> 1/18, 169-170.

<sup>146</sup> 1/18, 170.

<sup>147</sup> 1/18, 171-172.

<sup>148</sup> 1/18, 176-177.

<sup>149</sup> 1/18, 178.

After approximately four hours of deliberations, the jury found defendant guilty of first-degree murder.<sup>150</sup> On February 26, 2013, the trial court sentenced defendant to the mandatory life in prison.<sup>151</sup>

On July 22, 2014, the Court of APpeals in *People v Williams Lyles Jr.*,<sup>152</sup> reversed defendant's conviction based on the failure to give a character witness instruction and denied rehearing. The Michigan Supreme Court directed supplemental briefing and heard oral argument. After oral arguments, the Michigan Supreme Court issued the following order, in relevant part:

The Court of Appeals panel correctly stated that “[r]eversal for failure to provide a jury instruction requested by a defendant is unwarranted unless it appears that it is more probable than not that the error was outcome determinative.” Slip Op, p 4, citing *People v McKinney*, 258 Mich App 157, 163 (2003); MCL 769.26. However, the panel below did not clearly apply that standard. Instead, the panel cited several older cases from this Court that antedated our current harmless error standard for the proposition that a trial court's failure to give a requested and appropriate character evidence instruction “has been repeatedly held as error requiring reversal.” Slip Op, p 5.

None of these cases applied our current harmless error standard interpreting MCL 769.26, which holds that a “miscarriage of justice” occurs where it “‘affirmatively appear[s]’ that it is more probable than not that the error was outcome determinative.” *People v Lukity*, 460 Mich 484, 496 (1999). The Court of Appeals panel erred in relying on cases that did not apply the current standard in holding that a miscarriage of justice occurred in this case. On remand, we direct the Court of Appeals to apply our governing standard to the defendant's claim for relief.<sup>153</sup>

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<sup>150</sup> 1/18, 176, 183; 1/22, 3, 13.

<sup>151</sup> 2/26, 7.

<sup>152</sup> *People v William Lyles, Jr.*, unpublished per curiam opinion of the Michigan Court of Appeals, Issued July 22, 2014 (Docket No. 315323). Attached as Appendix A.

<sup>153</sup> *People v William Lyles, Jr.*, \_ Mich \_ (2015) (Issued October 30, 2015, Docket No. 150040).

Then on December 22, 2015, the Court of Appeals again reversed defendant's conviction because of the failure to give the character witness instruction. The People now apply for leave to appeal the Court of Appeals opinion.

## Argument I.

**A new trial should not be granted unless after an examination of the entire cause it shall affirmatively appear that the error resulted in a miscarriage of justice. Here, the character witness was not around defendant during the relevant time period, there was substantial evidence to support defendant's guilt, and the jury was instructed to consider all evidence when assessing defendant's guilt. Given the nature of the error, and the record of this case, the absence of an instruction under M Crim JI 5.8a(1), was not more probable than not outcome determinative.**

### Standard of Review

MCL 769.26 states that “[n]o judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a *miscarriage of justice*.” There is a miscarriage of justice where it “‘affirmatively appear[s]’ that it is more probable than not that the error was outcome determinative.”<sup>154</sup>

### Discussion

The Court of Appeals erred when it failed to consider the totality of the circumstances in its harmless error analysis. The trial court's failure to give the requested instruction did *not* result in a miscarriage of justice. In light of the instructions read to the jury to consider all the testimony and evidence when determining defendant's guilt, the very little weight Kim Harden's testimony carried, and the evidence in support of defendant's guilt, a specific instruction on Kim Harden's testimony would not have, more probable than not, altered the outcome of the trial.

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<sup>154</sup> *People v Lukity*, 460 Mich 484, 496 (1999).

When applying the miscarriage of justice standard, Michigan courts are to presume the validity of verdicts and are to reverse only with respect to those errors that affirmatively appear to undermine the reliability of the verdict.<sup>155</sup> As stated in *People v Lukity*, the governing standard of review, MCL 769.26 places the burden on the defendant to demonstrate that “after an examination of the *entire cause*, it shall affirmatively appear that the error asserted has resulted in a *miscarriage of justice*.”<sup>156</sup>

Here, it does not affirmatively appear that, after the examination of the entire cause, that failing to give the jury the specific instruction on Kim Harden’s testimony resulted in a miscarriage of justice. Particularly in the context of the other instructions given, it cannot be said that error, let alone error occasioning a miscarriage of justice, occurred here. The Court of Appeals entirely failed to consider any of the other instructions given. The jury here was instructed that “a reasonable doubt is a fair, honest doubt growing out of the evidence or the lack of evidence,”<sup>157</sup> and that the jurors “should consider all the evidence that you believe.”<sup>158</sup> They were also instructed that “As jurors you must decide what the facts are. That’s your job and that’s nobody else’s job. *You must think about all of the evidence and decide each piece of evidence, what it means and how important you think it is.* That includes whether you believe what each of the witnesses said, what you decide about any fact in the case is final.”<sup>159</sup> Accordingly, contrary

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<sup>155</sup> *Lukity, supra* at 493.

<sup>156</sup> *Lukity, supra* at 495 (*emphasis added*).

<sup>157</sup> 1/18, 155

<sup>158</sup> 1/18, 161.

<sup>159</sup> 1/18, 154.

to the Court of Appeals's claims, failure to give the character witness instruction did not "eviscerate" defendant's defense.

Had the Court of Appeals considered the other instructions given, in light of the totality of the circumstances, it would have found the error harmless. These instructions were adequate and it cannot be said that the instructions given, more probably than not, were outcome determinative in the case. This is true, even if the remaining portion of M Crim JI 5.8a(1) should have been given, as it says only that "You may consider this evidence, together with all the other evidence in the case, in deciding whether the defendant committed the crime with which (he / she) is charged." The other instructions on jury consideration of all evidence plainly conveyed the same instruction as the omitted portion of M Crim JI 5.8a.<sup>160</sup>

This Court has observed that "[b]oth the value and the wisdom of presenting character evidence have been doubted. It is thought that such evidence typically adds little of relevance to the determination of the actual issues in a case and is likely to inject extraneous elements."<sup>161</sup> Additionally, in *People v Shultz*, the Michigan Supreme Court stated that "the meagerness of the character testimony, confined to one witness only, tends toward a reluctance to reverse on the sole ground of error in charging the jury as to the importance and effect of character testimony."<sup>162</sup> And here character proof—which the Michigan Supreme Court has said "typically adds little of relevance"—was hardly important to defendant's theory of defense, as demonstrated

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<sup>160</sup> The People submit that the absence of this instruction here was not error at all, as it is not necessary, and in fact the last sentence, at least, should not be given.

<sup>161</sup> *People v Whitfield*, 425 Mich 116, 129-130 (1986).

<sup>162</sup> *People v Shultz*, 316 Mich 106 (1946)

quite clearly by his closing argument. And defendant was *not* deprived of the benefit of his proofs on the point, as he was absolutely free to argue to the jury that he had presented witnesses on the defendant's character for peacefulness, and argue the weight the jurors should give that evidence, and the jury was properly instructed, as indicated previously, on consideration of all the evidence. So, what did counsel say regarding the character proof presented? *Not one word.*<sup>163</sup> The defense argument was that the prosecution case "amounted to nothing" and "added up to zero" because the proofs were inadequate and the witnesses not credible, and that in fact defendant had "zero motive." This was also the theme of counsel's opening statement, where nary a word was spoken regarding the character of the defendant or character proof.<sup>164</sup>

The *evidence* defendant presented—and chose not to argue to the jury—was before the jury for consideration, it simply was not highlighted by a specific instruction.<sup>165</sup> Even if the lack of such an instruction is viewed as error, the defendant cannot, in the context of the evidence, and of the instructions given, as discussed above, show that the error was more probably than not outcome determinative. The record reveals that two witnesses immediately identified the intruder in the home on the night of the murder as defendant, defendant's shoes were found at the scene, defendant had threatened to "get Melvin" if that was the last thing he did, and the intruder knew where to find the murder weapon inside the home.<sup>166</sup>

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<sup>163</sup> See 1/18, 129-146.

<sup>164</sup> 1/15, 42-50.

<sup>165</sup> It can hardly be said then that it was the heart of defendant's defense, as described by the Court of Appeals.

<sup>166</sup> The defendant used a knife from the block set before, when he stabbed a knife in the mattress. 1/15, 91-94.

Defendant's character evidence that he was "peaceful" and "against violence," primarily before the murder occurred, had very little weight, especially in light of the evidence presented. The character evidence to which an instruction would have referred, the absence of which the Court of Appeals found more probably than not was outcome determinative, can be summarized as follows.<sup>167</sup> Kim Harden grew up in Highland Park, but moved to California to go to school in 1980.<sup>168</sup> Harden described defendant as like a "cousin" to her, she knew defendant her whole life, they lived on the same block, and their parents were very close.<sup>169</sup> After Harden moved to California, she returned to Michigan on occasion,<sup>170</sup> and when she did, she would visit defendant's family home, but she would only see defendant if he happened to be at the family home.<sup>171</sup> Harden knew Louise Kountz and throughout the 1980s, saw defendant and Kountz together about three or four times, and, to her, defendant appeared to be in love.<sup>172</sup> Harden described defendant as peaceful and against violence.<sup>173</sup> Harden's minimal contact with defendant between 1980 and 1985 provides very little weight to her opinion testimony of

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<sup>167</sup> The Court of Appeals referenced Harden's testimony only once throughout the whole opinion and not by name, in the following sentence: "defendant presented evidence of his peaceful character in the form of reputation and opinion testimony from a woman who had known defendant all her life and lived on defendant's street for many years." Slip op, 2.

<sup>168</sup> 1/18, 95.

<sup>169</sup> 1/18, 93.

<sup>170</sup> 1/18, 100. During the period of 1980-1985, Harden only returned home on the holidays and during summer breaks.

<sup>171</sup> 1/18, 95-97.

<sup>172</sup> 1/18, 103-104.

<sup>173</sup> 1/18, 100.



defendant's reputation in the community, as she did not live in the community during that time and only personally saw defendant on occasion.<sup>174</sup>

The Court of Appeals characterization of Harden's testimony as the "very heart of defendant's defense," clearly was not shared by defense counsel as no mention was made of Harden's testimony in her closing argument, a fact the Court of Appeals dismisses. The Court of Appeals states that defense counsel did not "focus" on Harden's testimony during closing argument, when in fact, defense counsel made *no* mention of Harden's testimony during closing argument. How then can Harden's testimony be the "very heart" of defendant's defense? It cannot.

The evidence proved defendant's guilt beyond a reasonable doubt. Two witnesses immediately identified the intruder as defendant. As Melissa Kountz was walking down the stairs to call the police, she saw the shadow of a man walking down the stairs ahead of her.<sup>175</sup> The build and smell of the man ahead of her confirmed that the man was in fact defendant.<sup>176</sup> Kimberly Stokes also identified the intruder as defendant. Kimberly saw the shadow of a man in their home as they were walking down the stairs and testified that the height and build of the man

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<sup>174</sup> Also because defendant was in the army from 1974 through 1977, it appears Harden's contact with defendant during that time was also limited. 1/18, 77. Harden makes no mention of defendant being in the army.

<sup>175</sup> 1/15, 113.

<sup>176</sup> 1/15, 113-114.

matched defendant's.<sup>177</sup> Both Melissa and Kimberly lived with defendant for over four years and were familiar with defendant.<sup>178</sup>

Not only did Melissa and Kimberly recall the man in their home to be defendant at trial, but they were certain it was defendant immediately after the murder when they ran to their neighbor's home to call 9-1-1. Carolyn Rhodman testified that on December 28, 1983, she woke up to commotion outside her home, she heard the doorbell ring, and answered the door to Melissa and Kimberly.<sup>179</sup> Carolyn described the girls as very upset, shaking, and crying.<sup>180</sup> They immediately said "defendant killed Melvin."<sup>181</sup> Camille Rhodman, also at home when Melissa and Kimberly sought to call 9-1-1, heard Melissa say that "defendant came into the house."<sup>182</sup>

In addition to Melissa and Kimberly's identification of the intruder as defendant, the evidence found in the home supports the finding that defendant stabbed Melvin. The intruder in 88 Louise broke the basement window, placed the puppy that usually stayed in the basement in the freezer, unscrewed two fuses, then went upstairs in the kitchen.<sup>183</sup> While in the kitchen, the intruder grabbed a butcher knife that was part of a knife block set, went upstairs and stabbed

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<sup>177</sup> 1/16, 183-184.

<sup>178</sup> 1/15, 56; 1/17, 17.

<sup>179</sup> 1/17, 94-95.

<sup>180</sup> 1/17, 97.

<sup>181</sup> 1/17, 97.

<sup>182</sup> 1/17, 118.

<sup>183</sup> 1/15, 131-134.

Melvin one time.<sup>184</sup> As the girls went outside, no cars were seen leaving the scene.<sup>185</sup> A pair of defendant's shoes with a sponge taped to the bottom of one shoe, which were not there before, were found behind the kitchen door.<sup>186</sup> The evidence supports the finding that defendant was the intruder. Defendant was aware of the layout of the home because he lived there, he knew of the butcher knife block set, because he used a knife from that set to stab the mattress,<sup>187</sup> he knew where Melvin slept, and was living on the same street.<sup>188</sup> This evidence supported Melissa and Kimberly's identification of defendant.

The evidence also established that defendant had a motive to kill Melvin.<sup>189</sup> Before the murder, defendant blamed Melvin for the demise of his relationship with Louise and said "if it's the last thing I do I'm going to get Melvin."<sup>190</sup> And in fact that was the last thing defendant did before he left Michigan.<sup>191</sup> Even if it was believed that defendant was peaceful and against violence, primarily sometime before 1980,<sup>192</sup> or even during Harden's sporadic visits with

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<sup>184</sup> 1/15, 129.

<sup>185</sup> 1/15, 117.

<sup>186</sup> 1/16, 10-11.

<sup>187</sup> 1/15, 93-94, 129.

<sup>188</sup> 1/15, 77.

<sup>189</sup> The Court of Appeals dismisses this claim and ignores this evidence.

<sup>190</sup> 1/15, 99.

<sup>191</sup> After December 28, 1983, defendant was not seen in Highland Park again. 1/16, 192; 1/18, 29.

<sup>192</sup> Harden left the state of Michigan in 1980 and defendant was in the army between 1974 through 1977.

defendant, it does not outweigh the evidence presented. The evidence in summary is the following: defendant was abusive around the time of the murder, two witnesses in the home the night of Melvin's murder said the intruder in their home was defendant, defendant had a vendetta against Melvin and threatened to "get" Melvin, defendant's shoes were found in the home on the night of the murder-but were not there before- and the intruder knew a puppy would be in the basement, where the fuse box was, and where in the house he could find the murder weapon to use on Melvin. And defendant was last seen the night of Melvin's murder.

In this context, then, where the character proofs presented were not even argued by defense counsel, no miscarriage of justice appears. As the Michigan Supreme Court has put the defendant's burden in this regard,

The object of this inquiry is to determine if it affirmatively appears that the error asserted "undermine[s] the reliability of the verdict." *Id.* at 211, 551 N.W.2d 891. In other words, the effect of the error is evaluated by assessing it in the context of the untainted evidence to determine whether *it is more probable than not that a different outcome would have resulted without the error*. Therefore, the bottom line is that § 26 presumes that a preserved, nonconstitutional error is not a ground for reversal unless "after an examination of the entire cause, it shall affirmatively appear" that it is more probable than not that the error was outcome determinative.<sup>193</sup>

If there was error in not giving the requested instruction, defendant has not carried his burden of showing that "after an examination of the entire cause, it affirmatively appears" that it is more probable than not that the error was outcome determinative. For this reason, this Court should find that failure to read the requested instruction was not more probable than not outcome determinative and reverse the Court of Appeals opinion.

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<sup>193</sup> *Lukity, supra* at 495-496.

**Relief**

Wherefore, the People respectfully request that this Court peremptorily reverse the Court of Appeals opinion and affirm defendant's convictions or grant the People's application for leave to appeal.

Respectfully submitted,

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